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FILED
U.S. DISTRICT COURT
EASTERN DISTRICT OF TEXAS
OCT 12 2017

BY
DEPUTY

8 IN THE UNITED STATES DISTRICT COURT FOR THE
9 EASTERN DISTRICT OF TEXAS
10 LUFKIN DIVISION

12 DAVID MARK DAVIS II,

14 Plaintiff,

16 v.

19 ANGELINA COLLEGE BOARD OF
20 TRUSTEES, MICHAEL SIMON, STEVE
21 HUDMAN AND MYRNIA BOYD,

23 Defendants.

25 All above named individual defendants are
26 sued in both their individual and official
27 capacities

Case No.: 9:17cv179

PLAINTIFF'S ORIGINAL COMPLAINT
FOR CIVIL RIGHTS VIOLATIONS,
DEFAMATION, BREACH OF
CONTRACT, AND TORTIOUS,
INTERFERENCE WITH EXISTING
CONTRACT

PLAINTIFF SEEKS: (1) MONETARY
DAMAGES (2) TEMPORARY,
PRELIMINARY & PERMANENT
INJUNCTIVE RELIEF AND (3)
DECLARATORY RELIEF

JURY TRIAL DEMANDED

38 TO THE HONORABLE JUDGE OF SAID COURT:

40 A. PRELIMINARY STATEMENT

42 1. Plaintiff files this action against the above named defendants for violation of Plaintiff's
43 clearly established constitutional rights, retaliation against for complaining of disability

1 discrimination, defamation, breach of contract and torturous interference with existing
2 contract.
3 2. Each individually named defendant is sued in both their official and individual
4 capacities. At all times relevant, Defendants acted under color of state law. Plaintiff
5 has exhausted all available administrative remedies and has attempted to informally
6 resolve this controversy with the defendants but to no avail. Plaintiff requests a jury
7 trial in this matter.
8

9 **B. JURY DEMAND**
10

11 3. Plaintiff hereby requests a jury trial in this matter.
12

13 **C. PARTIES**
14

15 4. Plaintiff, DAVID MARK DAVIS II, is an individual that is a citizen under the laws of
16 the State of Texas.
17
18 5. Defendant, ANGELINA COLLEGE BOARD OF TRUSTEES, is a corporate body and
19 a political subdivision of the State of Texas and a “person” subject to suit within the
20 meaning of 42 U.S.C. Section 1983. It is vested with the supervision of the public
21 junior college within Angelina County, including the treatment and discipline of
22 students. Defendant, ANGELINA COLLEGE BOARD OF TRUSTEES may be served
23 with process through Angelina College President, Dr. Michael Simon, located in the
24 Angelina College Administration Building at 3500 S 1st St, Lufkin, TX 75904 or
25 wherever he may be found.
26
27 6. Defendant, MICHAEL SIMON, is the President of Angelina College. He is sued for
28 damages in his individual capacity and for damages, declaratory and injunctive relief in
29 his official capacity and may be served with process at 500 S 1st St, Lufkin, TX 75904
30 or wherever he may be found
31
32 7. Defendant, STEVE HEDMAN, is the Dean of Students for Angelina College. He is
33 sued for damages in his individual capacity and for damages, declaratory and injunctive
34 relief in his official capacity and may be served with process at 500 S 1st St, Lufkin,
35 TX 75904 or wherever he may be found.
36
37 8. Defendant, MYRNIA BOYD, is a Clerk in the Records Office for Angelina College. She
38 is sued for damages in her individual capacity and for damages, declaratory and injunctive
39 relief in her official capacity and may be served with process at 500 S 1st St,
40 Lufkin, TX 75904 or wherever she may be found.
41
42 9. At all times relevant, Defendants acted under color of state law.
43

D. JURISDICTION

10. This Court has jurisdiction over this action pursuant to Title 28 U.S.C. §§1331 and 1333(3) in that the controversy arises under the United States Constitution and under 42 U.S.C. §1983, 42 U.S.C. § 12203 and 28 CFR § 36.206. This Court has authority to award attorneys fees pursuant to 42 U.S.C. §1988. Plaintiff further invokes the supplemental jurisdiction of this Court under 28 U.S.C. §1337(a) to hear and adjudicate state law claims. Each and all of the acts (or threats of acts) alleged herein were done by defendants, or their officers, agents, and employees, under color and pretense of the statutes, ordinances, regulations, customs and usages of Angelina College.

Statement on Sovereign Immunity

11. Defendant Angelina College is a Community College thus is not entitled to sovereign immunity in federal court. See *Hander v. San Jacinto Junior College*, 519 F.2d 273, 278 (5th Cir. 1975)

E. VENUE

12. Venue is proper in this district under 28 U.S.C. §1331(b)(2) because a substantial part of the events or omissions giving rise to this claim occurred in this district.

F. CONDITIONS PRECEDENT

13. All conditions precedent have been performed or have occurred. Plaintiff has exhausted all available administrative remedies. Plaintiff further avers that he has made a good faith attempt to resolve this matter outside of the Court's however Defendant refuses to settle but instead further retaliates against Plaintiff for trying.

G. FACTS

14. Plaintiff avers the following facts related to his claim:

15. Plaintiff initially attended College at Angelina College during the Spring 2002 semester. After that, Plaintiff attended off and on without issue until the Spring 2007 semester when then Angelina College President Larry Phillips involuntarily removed Plaintiff from EMS classes over his objections on the sole basis that Plaintiff is autistic and Mr. Phillips didn't feel an autistic student could succeed in an EMS

1 program. This removal was conducted even following Plaintiff providing the College
2 an unconditional medical release and statement in support of enrollment from his
3 mental health provider at the request of the EMS program director.

4

5 16. After being unlawfully discriminated against by Mr. Phillips, Plaintiff became very
6 vocal as to misconduct at the College, including misconduct in the Records Office by
7 the College Registrar.

8

9 17. In the Spring of 2008, Ms. Myrnia Boyd and former employee Ms. Brenda Ross made
10 a complaint that Plaintiff student was stalking Ms. Boyd. She made several very
11 factually contested allegations against Davis which Davis argues were motived by his
12 complaining against her supervisor, the College Registrar. A true and correct copy of
13 the referenced accusations by Ms. Boyd and Ms. Ross are attached hereto as Exhibit
14 "1" and "2" respectively and are incorporated by reference.

15

16 18. Following Ms. Boyd's malicious complaints, Angelina College President Larry
17 Phillips investigated the complaints but never initiated disciplinary action against
18 Davis. Phillips instead removed Davis from classes without notice, hearing or appeal
19 rights and had the Lufkin Police Department issue Davis a no trespassing warning. A
20 true and correct copy of the referenced No Trespass Warning is attached hereto as
21 Exhibit "3" and is incorporated by reference.

22

23 19. Dr. Phillips also issued an order that any future enrollment by Plaintiff would have to
24 be online only. Dr. Phillips made this order and restriction outside the established
25 College Disciplinary process. A true and correct copy of the referenced Order is
26 attached hereto as Exhibit "4" and is incorporated by reference.

27

28 20. Plaintiff appealed this action to the Board of Trustees, but they took no action. A true
29 and correct copy of the No Action letter (as documented by the then College
30 President) is attached hereto as Exhibit "5" and is incorporated by reference.

31

32 21. Dr. Phillips never enforced his order and allowed Plaintiff to attend Angelina College
33 again in 2010 and 2015 without restrictions.

34

35 22. Plaintiff took a break from Angelina College enrollment between 2015 and 2017
36 while he focused on obtaining a second bachelor degree, law degree and MBA using
37 his military education benefits.

38

39 23. In July 2017, Plaintiff filed for disability accommodations for the following qualified
40 disabilities for which he suffers: Post Traumatic Stress Disorder, Anxiety Disorder,
41 Depressive Disorder, all of which are related to Plaintiff's Honorable military service
42 in the United States Armed Forces and United States Intelligence Community. With
43 his application, Plaintiff submitted 731-pages of medical documentation to support his
request for disability accommodations.

1 24. On August 8, 2017, Dean Hunt emailed the Plaintiff demanding that Plaintiff provide
 2 more documentation than the volumes he already provided.

3 25. On August 8, 2017, Plaintiff, by email, complained to Dean Hunt about her overly
 4 burdensome request for more documentation. Dean Hunt responded by involving
 5 Defendant Dean Steve Hudman into the matter.

6 26. Dean Hudman immediately began harassing the Plaintiff by bringing up a baseless
 7 complaint that was made by an Angelina College staff member, Defendant Myrnia
 8 Boyd, approximately 10 years prior which was investigated and dismissed by the prior
 9 College administration without formal disciplinary action being taken.

10 27. In August 2017, Ms. Boyd recited her false accusations to several members of the
 11 college staff. Dean Hudman then republished those statements to several other
 12 members of the College staff.

13 28. On August 11, 2017 and as part of his pattern of harassing conduct, Dean Hudman
 14 issued a student summons via email demanding Plaintiff appear in his office on
 15 August 11, 2017 at 3:00PM, just a few short hours after the summons was issued.
 16 Being that Plaintiff is a busy adult that he is, Plaintiff advised Dean Hudman that he
 17 could not attend the last minute meeting by responding to his email by stating "*I will*
 18 *be out of town this afternoon*". Dean Hudman responded by email stating: "*I received*
 19 *your email stating you would be out of town today. I am amicable to meeting during*
 20 *normally business hours Monday August 14, 2017 at a time that is convenient for you*
 21 *to accommodate your out of town trip.... Please contact my office so I may know when*
 22 *to expect you*". Plaintiff took this communication as Dean Hudman canceling the
 23 meeting. He never issued another summons regarding the matter. Dean Hudman
 24 contends that his *request* of "*Please contact my office so I may know when to expect*
 25 *you*" was the same thing as issuing a new summons. Plaintiff took this statement as a
 26 voluntary request since if Dean Hudman really wanted to meet with Plaintiff (and later
 27 write him up for no showing), then he would have given Plaintiff a specific time and
 28 place to appear – Dean Hudman did not do this. A true and correct copy of the
 29 referenced August 11, 2017 Student Summons is attached hereto as Exhibit "6" and is
 30 incorporated by reference. A true and correct copy of the referenced email
 31 communications chain is attached hereto as Exhibit "7" and is incorporated by
 32 reference.

33 29. On August 18, 2017, Dean Hudman proceeded to impose a disciplinary action on
 34 Plaintiff without providing Plaintiff with any notice, hearing or other meaningful
 35 opportunity to respond to Hudman's accusations. Hudman alleged that Plaintiff was
 36 being disciplined for failure to show up for the above referenced hearing and that as a
 37 result Davis was not allowed to take campus based classes. Davis initiated a grievance
 38 citing the blatant violation of the disciplinary due process requirements spelled out in
 39 Angelina College Policy and as constitutionally required by Dixon v. Alabama State

Board of Education, 294 F. 2d 150 (5th Cir. 1961). While Hudman subsequently reset Davis' disciplinary action for hearing on August 30, 2017, he refused to remove the restrictions that he unconstitutionally imposed as part of the August 18, 2017 ex parte disciplinary action while the new disciplinary action was pending. Plaintiff argues that this baseless disciplinary action and the denial of rights under Dixon and College Policy were motivated by Davis' previous complaints to Angelina College regarding illegal harassment for Davis standing up for himself in the disability accommodations process. A true and correct copy of the referenced disciplinary action is attached hereto as Exhibit "8" and is incorporated by reference. A true and correct copy of the referenced Angelina College disciplinary procedure is attached hereto as Exhibit "9" and is incorporated by reference.

30. On August 25, 2017, Dean Hudman again initiated a disciplinary action against Davis for failure to show up at the August 11, 2017 meeting that he canceled. This time Hudman did provide Davis with notice and a hearing. Dean Hudman set the hearing for August 30, 2017. In said notice, Dean Hudman nowhere mentioned that Davis failed to show up on Monday, August 14, 2017, but only cited the August 11, 2017 summons for the meeting Dean Hudman canceled. At the hearing, Dean Hudman nevertheless proceeded to admit evidence and ultimately convict Davis of failing to show up at the alleged August 14, 2017 hearing (which there is no evidence that a time and date were ever set) despite not mentioning this alleged hearing anywhere in the notice of charges. Plaintiff argues that this baseless disciplinary action and intentional failure to provide constitutionally adequate notice was motivated by Davis' previous complaints to Angelina College regarding illegal harassment for Davis standing up for himself in the disability accommodations process. A true and correct copy of the referenced insufficient notice is attached hereto as Exhibit "10" and is incorporated by reference. A true and correct copy of the referenced August 25, 2017 conviction in the disciplinary action is attached hereto as Exhibit "11" and is incorporated by reference.

31. On September 5, 2017, Plaintiff met with Dean Hudman regarding Plaintiff's status as a student. During this meeting, Dean Hudman informed Plaintiff that in August 2017, Angelina College Records Office Clerk Myrnia Boyd had again made claims that Plaintiff stalked her back in 2008 and she again confirmed to Dean Hudman all of the accusations that she had made a decade prior. Dean Hudman informed Davis that while making no new accusations, Ms. Boyd nevertheless claimed that she still feared for her life with Davis on campus. During said meeting, Davis again disputed Ms. Boyd's claims and even pointed out that she never called the police to report any of her alleged fears. Davis further pointed out that he was never subjected to disciplinary action as a result of the accusations. Following the meeting, Dean Hudman sent Davis a letter stating that Davis would be allowed to attend class on campus, but would be subject to restrictions not imposed on other students based on Ms. Boyd's accusations.

1 A true and correct copy of the referenced September 5, 2017 restriction letter is
 2 attached hereto as Exhibit "12" and is incorporated by reference.
 3

4 32. By various follow up emails Davis sent in response, Davis not only objected to
 5 Hudman's purposed restrictions as a matter of public policy, but he also challenged
 6 Hudman's legal authority to issue them in the first place in this instance. Davis cited
 7 the fact that no disciplinary action was ever taken against Davis regarding the stalking
 8 claims and the fact that the Constitution and Angelina College Policy didn't allow this
 9 type restrictions to be imposed outside of the established disciplinary policy. Angelina
 10 College later responded on October 10, 2017 that two sections of policy allowed
 11 Hudman's actions. First it cited the College Disciplinary Process (FLB), however, it is
 12 very noteworthy that Davis was never provided the procedural requirements of this
 13 process (notice, hearing, appeal) for this to be applicable. Second, the College cited
 14 College Policy DIA – *Employee Freedom from Discrimination, Harassment, and*
 15 *Retaliation*, but this provision doesn't apply to students, and even if it did, the College
 16 is not alleging that Davis engaged in protected discrimination (nor does the policy
 17 allow the restrictions if they were). As such, Davis contends that neither of the cited
 18 authorities provided Dean Hudman with the necessary legal justification to place
 19 disciplinary restrictions on Davis outside the disciplinary process (as he is attempting
 20 to do). A true and correct copy of the referenced email response chain is attached
 21 hereto as Exhibit "13" and is incorporated by reference. A true and correct copy of the
 22 referenced College Policy FLB and DIA are attached hereto as Exhibits "14" and "15"
 23 respectively, and are incorporated by reference
 24

25 33. On September 7, 2017 in response to Ms. Boyd's malicious and false accusations,
 26 Davis filed a grievance pursuant the Angelina College grievance policy with Ms.
 27 Boyd alleging that she was making false statements in violation of the Texas
 28 Defamation Mitigation Act and that she was denying Davis due process by using her
 29 position under color of state law to keep Davis from enjoying the full benefits of
 30 attending Angelina College that all other students are providing. A true and correct
 31 copy of the referenced grievances and their respective attachments are attached hereto
 32 as Exhibit "16" and "17" and are incorporated by reference.
 33

34 34. On September 12, 2017, Dean Hudman unilaterally dismissed the above referenced
 35 grievances directed to Ms. Boyd without adequate justification. My grievances were
 36 made in good faith and accordance with state law and College grievance policy, yet
 37 Dean Hudman refused to recognize them. A true and correct copy of the referenced
 38 September 5, 2017 restriction letter is attached hereto as Exhibit "18" and is
 39 incorporated by reference.
 40

41 35. On September 12, 2017, Dean Hudman initiated a disciplinary hearing for Plaintiff
 42 based on accusations that Davis violated an order not to file a grievance with Ms.
 43 Myrnia Boyd. The subject matter of the disciplinary action was the two grievances

1 referenced immediately above. At the hearing, Davis argued that he had a
 2 constitutional right to file the grievances with Ms. Boyd, Dean Hudman's alleged
 3 order was unconstitutional as it violated due process, Dean Hudman's alleged order
 4 was ultra vires and beyond his authority to issue in this instance and that Dean
 5 Hudman's order was pre-empted by the Texas Defamation Mitigation Act, which
 6 requires a Plaintiff to first contact the defendant directly to retract a defamatory
 7 statement prior to initiating suit against a defendant for defamation. Hudman rejected
 8 all of Davis' arguments and found him guilty of violating the alleged order not to file
 9 a grievance with Ms. Boyd. A true and correct copy of the referenced finding of guilt
 10 is attached hereto as Exhibit "19" and is incorporated by reference.

11 36. Davis almost immediately appealed the above finding of guilt and punishment to the
 12 College's Student Conduct Panel and College President Michael Simon based on the
 13 same defenses but ultimately found Davis guilty and ultimately expelled him.

14 37. On September 10, 2017, Dean Hudman called Davis from an unmarked telephone
 15 number and told Davis that he needed to stand down with his complaints and Hudman
 16 stated to Davis that "I will beat your ass" if Davis didn't stand down. This threat
 17 coupled with all the harassing and baseless disciplinary actions and Hudman's prior
 18 violent conduct toward Davis at a meeting on September 5, 2017 which Davis
 19 attended caused Davis to feel unsafe around Hudman or at any place on campus.

20 38. Davis has repeatedly contended that Hudman's above referenced conduct amounts to the
 21 criminal and tort offenses of stalking.

22 39. Davis has complained to law enforcement on multiple occasions regarding Dean
 23 Hudman's stalking behaviors.

24 40. Davis was unable to personally attend most of the hearings in this matter based on his
 25 reasonable fear of Dean Hudman and the College's unwillingness to act on his
 26 repeated complaints that Dean Hudman was stalking Davis. Davis asked at each stage
 27 of the proceeding if the College would accommodate Davis and allow him to appear
 28 by phone but these requests were refused.

29 41. At each stage of the disciplinary process, I requested that Ms. Boyd be able to attend
 30 to testify on my behalf. At each stage of the hearing I was denied this right citing the
 31 100-ft and no contact order.

32 42. On September 22, 2017, the Student Conduct Panel found Davis guilty of no-showing
 33 the canceled August 11, 2017 meeting and for filing a grievance in violation of Dean
 34 Hudman's alleged order. The Panel rejected each of the defenses Davis made at both
 35 the initial hearing stage and before them. The Panel assessed Davis' punishment at
 36 expulsion. A true and correct copy of the referenced finding of guilt and punishment is
 37 attached hereto as Exhibit "20" and is incorporated by reference.

38

43. On October 11, 2017, College President Michael Simon affirmed the Student Conduct Panel's finding of guilt on both charges and affirmed the punishment the Panel issued. Mr. Simon rejected Davis' defenses in detail in his order. Further, Mr. Simon threatened to seek "sanctions" if Davis filed this lawsuit which he calls baseless (Davis wholly disagrees with this opinion). A true and correct copy of the referenced order is attached hereto as Exhibit "21" and is incorporated by reference.

44. All events occurred in Angelina County, Texas.

45. At all times relevant, Defendants were acting under color of state law.

46. Angelina College is a recipient of federal funding.

47. All named Defendants retaliated against Plaintiff for complaining of unlawful disability discrimination by denying him his constitutional rights to freedom of speech, right to petition and due process and affording him the benefit of the student disciplinary process.

48. Angelina College's policy or custom enabled its agents and employees to act with deliberate indifference to plaintiff's clearly established civil rights.

49. Davis has exhausted all available administrative remedies to correct this injustice.

H. CLAIMS

**COUNT 1 – 42 U.S.C. §1983: FOURTEENTH AMENDMENT DUE PROCESS CLAIM
AGAINST MICHAEL SIMON AND STEVE HUDMAN
IN INDIVIDUAL CAPACITY**

50. Plaintiff avers the following facts and contention in support of this claim:

51. Plaintiff realleges and incorporates the factual allegations, along with exhibits, outlined in Section "G" of this petition

52. Defendants Simon and Hudman imposed the following disciplinary restrictions on Plaintiff's enrollment without first, or ever, affording Plaintiff his clearly established right to notice, hearing, meaningful opportunity to respond, and appeal:

a) Plaintiff will not go in the Administration Building on the Angelina College campus; and

b) Plaintiff will refrain from contacting or coming with 100 feet of Myrnia Boyd.

1 53. Defendants had no justifiable reason to place the above referenced disciplinary
2 enrollment restrictions on Plaintiff without first providing him with the benefit of the
3 Angelina College student disciplinary process.

4 54. Defendants restrictions resulted in injury to Plaintiff through the denial of Plaintiff's
5 fundamental constitutional rights to Freedom of Speech, Right to Petition and Right to
6 Due Process.

7 55. Defendant's decision to restrict plaintiff violated plaintiff's clearly established
8 constitutional rights and was not objectively reasonable in light of the circumstances. *See*
9 *Durham*, 737 F.3d at 303-04.

10 56. Defendants actions were imposed contrary to clearly established federal and state law and
11 Angelina College policy.

12 57. Defendants Simon and Hudman acted willfully, deliberately, maliciously, or with
13 reckless disregard for Plaintiff's right to due process as protected under the Fourteenth
14 Amendment. *See Smith v. Wade*, 461 U.S. 30, 45-48 (1983); *Powell v. Alexander*, 391
15 F.3d 1, 19 (1st Cir. 2004).

16 58. In committing the acts and omissions described herein, Simon and Hudman, have acted
17 in bad faith, with gross misjudgment and deliberate indifference to Plaintiff's civil rights.

20 **COUNT 2 – 42 U.S.C. §1983: MONELL LIABILITY AGAINST ANGELINA COLLEGE**

21 59. Plaintiff avers the following facts and contention in support of this claim:

22 60. Plaintiff realleges and incorporates the factual allegations, along with exhibits, outlined in
23 Section "G" of this petition

24 61. Angelina College's policy or custom enabled its agents and employees to act with
25 deliberate indifference to plaintiff's right to due process. *See Monell v. Dep't of Soc.*
26 *Servs.*, 436 U.S. 658, 690-91 (1978); *Langford v. City of Atl. City*, 235 F.3d 845, 847-48
27 (3d Cir. 2000).

28 **COUNT – 42 U.S.C. §1983: FOURTEENTH AMENDMENT DUE PROCESS CLAIM**
29 **AGAINST STEVE HUDMAN**
30 **IN INDIVIDUAL CAPACITY**

31 62. Plaintiff avers the following facts and contention in support of this claim:

32 63. Plaintiff realleges and incorporates the factual allegations, along with exhibits, outlined in
33 Section "G" of this petition

34 64. Defendant Hudman imposed the following disciplinary restrictions on Plaintiff's

1 enrollment without first, or ever, affording Plaintiff his clearly established right to notice,
2 hearing, meaningful opportunity to respond, and appeal:

3 a) Plaintiff will be restricted to taking on-line only courses at Angelina College.

4 65. Defendant had no justifiable reason to place the above referenced disciplinary enrollment
5 restrictions on Plaintiff without first providing him with the benefit of the Angelina
6 College student disciplinary process.

7 66. Defendant restrictions resulted in injury to Plaintiff through the denial of Plaintiff's
8 fundamental constitutional right to due process.

9 67. Defendant's decision to restrict plaintiff violated plaintiff's clearly established
10 constitutional rights and was not objectively reasonable in light of the circumstances. *See*
11 *Durham*, 737 F.3d at 303-04.

12 68. Defendant's actions were imposed contrary to clearly established federal and state law
13 and Angelina College policy.

14 69. Defendant acted willfully, deliberately, maliciously, or with reckless disregard for
15 Plaintiff's right to due process as protected under the Fourteenth Amendment. *See Smith*
16 *v. Wade*, 461 U.S. 30, 45-48 (1983); *Powell v. Alexander*, 391 F.3d 1, 19 (1st Cir. 2004).

17 70. In committing the acts and omissions described herein, Hudman, have acted in bad faith,
18 with gross misjudgment and deliberate indifference to Plaintiff's civil rights.

26 **COUNT 4 – 42 U.S.C. §1983: MONELL LIABILITY AGAINST ANGELINA COLLEGE**

27 71. Plaintiff avers the following facts and contention in support of this claim:

28 72. Plaintiff realleges and incorporates the factual allegations, along with exhibits, outlined in
29 Section "G" of this petition

30 73. The Angelina College's policy or custom enabled its agents and employees to act with
31 deliberate indifference to plaintiff's right to due process. *See Monell v. Dep't of Soc.*
32 *Servs.*, 436 U.S. 658, 690-91 (1978); *Langford v. City of Atl. City*, 235 F.3d 845, 847-48
33 (3d Cir. 2000).

34 **COUNT 5 – 42 U.S.C. §1983: FIRST AMENDMENT RETALIATION CLAIM**
35 **AGAINST MICHAEL SIMON AND STEVE HUDMAN**
36 **IN INDIVIDUAL CAPACITY**

37 74. Plaintiff avers the following facts and contention in support of this claim:

38 75. Plaintiff realleges and incorporates the factual allegations, along with exhibits, outlined in

Section "G" of this petition

76. At the time of plaintiff's protected speech, plaintiff was acting as a private citizen speaking as to a matter of public concern. *See Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006); *Connick v. Myers*, 461 U.S. 138, 147-49 (1983); *Durham v. Jones*, 737 F.3d 291, 299-300 (4th Cir. 2013); *Looney v. Black*, 702 F.3d 701, 710 (2d Cir. 2012).
77. Plaintiff's interest in *his actions* outweighs any interest of Angelina College in promoting the efficient operation and administration of government services. *See Pickering v. Bd. of Educ. of Twp. High Sch. Dist.* 205, 391 U.S. 563, 568 (1968); *Handy-Clay v. City of Memphis*, 695 F.3d 531, 544 (6th Cir. 2012).
78. The adverse action taken against plaintiff would deter a person of ordinary firmness from continuing to engage in the protected speech. *See Handy-Clay*, 695 F.3d at 545.
79. Plaintiff's protected speech was a substantial and motivating factor in Defendants decision to expel Plaintiff from Angelina College.
80. Defendant's decision to expel Plaintiff violated Plaintiff's clearly established constitutional rights and was not objectively reasonable in light of the circumstances. *See Durham*, 737 F.3d at 303-04.
81. Defendants Simon and Hudman acted willfully, deliberately, maliciously, or with reckless disregard for plaintiff's right to free speech protected under the First Amendment. *See Smith v. Wade*, 461 U.S. 30, 45-48 (1983); *Powell v. Alexander*, 391 F.3d 1, 19 (1st Cir. 2004).
82. In committing the acts and omissions described herein, Simon and Hudman, have acted in bad faith, with gross misjudgment and deliberate indifference to Plaintiff's civil rights.

COUNT 6 – 42 U.S.C. §1983: MONELL LIABILITY AGAINST ANGELINA COLLEGE

83. Plaintiff avers the following facts and contention in support of this claim:
84. Plaintiff realleges and incorporates the factual allegations, along with exhibits, outlined in Section "G" of this petition
85. The Angelina College's policy or custom enabled its agents and employees to act with deliberate indifference to plaintiff's right to free speech. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-91 (1978); *Langford v. City of Atl. City*, 235 F.3d 845, 847-48 (3d Cir. 2000).

**COUNT 7 – 42 U.S.C. §1983: FIRST AMENDMENT RIGHT TO PETITION CLAIM
AGAINST MICHAEL SIMON AND STEVE HUDMAN
IN INDIVIDUAL CAPACITY**

1 86. Plaintiff avers the following facts and contention in support of this claim:

2 87. Plaintiff realleges and incorporates the factual allegations, along with exhibits, outlined in

3 Section "G" of this petition

4 88. At the time of plaintiff's protected petition for redress of grievance, plaintiff was acting as

5 a private citizen who was exercising his right to petition Angelina College, and its agents,

6 both local government entities, for the redress of grievances. *United States v. Cruikshank*,

7 92 U.S. 542 (1876);

8 89. Plaintiff's interest in *his actions* outweighs any interest of Angelina College in promoting

9 the efficient operation and administration of government services. *See Pickering v. Bd. of*

10 *Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 568 (1968); *Handy-Clay v. City of*

11 *Memphis*, 695 F.3d 531, 544 (6th Cir. 2012).

12 90. Defendants had no justifiable reason to ban Plaintiff from filing grievances with College

13 personnel pursuant the College grievance policy.

14 91. The adverse action taken against plaintiff would deter a person of ordinary firmness from

15 continuing to engage in the protected speech. *See Handy-Clay*, 695 F.3d at 545.

16 92. Plaintiff's protected grievance was a substantial and motivating factor in Defendant's

17 decision to expel Plaintiff from Angelina College.

18 93. Defendant's decision to expel plaintiff violated plaintiff's clearly established

19 constitutional rights and was not objectively reasonable in light of the circumstances. *See*

20 *Durham*, 737 F.3d at 303-04.

21 94. Defendants Simon and Hudman acted willfully, deliberately, maliciously, or with

22 reckless disregard for Plaintiff's right to petition as protected under the First Amendment.

23 *See Smith v. Wade*, 461 U.S. 30, 45-48 (1983); *Powell v. Alexander*, 391 F.3d 1, 19 (1st

24 Cir. 2004).

25 95. In committing the acts and omissions described herein, Simon and Hudman, have acted

26 in bad faith, with gross misjudgment and deliberate indifference to Plaintiff's civil rights.

27 **COUNT 8 – 42 U.S.C. §1983: MONELL LIABILITY AGAINST ANGELINA COLLEGE**

28 96. Plaintiff avers the following facts and contention in support of this claim:

29 97. Plaintiff realleges and incorporates the factual allegations, along with exhibits, outlined in

30 Section "G" of this petition

31 98. The Agelina College's policy or custom enabled its agents and employees to act with

32 deliberate indifference to plaintiff's right to petition the government for redress of

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1 grievances. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690-91 (1978); *Langford v.*
2 *City of Atl. City*, 235 F.3d 845, 847-48 (3d Cir. 2000).

3

4 **COUNT 9 – SECTION 504 OF THE REHABILITATION ACT OF 1973 –**
5 **RETALIATION CLAIM AGAINST ANGELINA COLLEGE BOARD OF TRUSTEES,**
6 **MICHAEL SIMON AND STEVE HUDMAN**

7

8 99. Plaintiff avers the following facts and contention in support of this claim:

10 100. Plaintiff realleges and incorporates the factual allegations, along with exhibits,
11 outlined in Section "G" of this petition

12 101. Plaintiff engaged in a protected activity, to wit: complaining of perceived
13 disability discrimination.

14 102. Defendant retaliated against Plaintiff by denying him his clearly established rights
15 to due process, freedom of speech and right to petition which ultimately led to Plaintiff's
16 expulsion based on baseless disciplinary charges

17 103. Defendant's retaliatory action was sufficient to deter a person of ordinary
18 firmness from exercising his or her rights

19 104. That there was a causal connection between the protected activity and the
20 retaliation

21 105. Defendant is the recipient of federal funding.

22

23

24 **COUNT 10 – DEFAMATION CLAIM AGAINST BOYD AND HUDMAN**

25

26 106. Defendants Boyd and Hudman published a statement by *oral communication in August*
27 *2017 asserting as fact that Plaintiff had followed Defendant Boyd home from work, that*
28 *Plaintiff stalked Defendant Boyd by repeatedly showing up at her work, and that Plaintiff*
29 *was admitted to a psychiatric hospital because Defendant's Boyd and Hudman claim*
30 *Plaintiff assaulted my brother.*

31 107. Defendants Boyd and Hudman's statements involved a matter of private concern.

32 108. Defendants Boyd and Hudman's statement referred to Plaintiff by name.

33 109. Defendants oral statement was defamatory per se under common law. Defendant's
34 statement (A) injured plaintiff in plaintiff's educational capacity by having him removed
35 from college classes.

1 110. Defendants Boyd and Hudman's statement was false because it never happened.
2
3 111. Defendants Boyd and Hudman's are strictly liable to Plaintiff for the defamation.
4
5 112. Defendants Boyd and Hudman's were negligent in determining whether the statement
6 was true.
7
8 113. Defendants Boyd and Hudman's false statement directly and proximately caused injury
9 to Plaintiff, which resulted in the following general damages: being removed from College
10 classes which Plaintiff paid for.
11
12 114. Defendants Boyd and Hudman's false statement was defamatory per se, which entitles
13 Plaintiff to a presumption of general damages.
14
15 115. Defendant Boyd and Hudman's false statement directly and proximately caused injury to
16 Plaintiff, which resulted in the following special damages: emotional distress.
17
18 116. Exemplary damages. Plaintiff's injury resulted from Defendants Boyd and Hudman's
19 malice, which entitles plaintiff to exemplary damages under Texas Civil Practice &
20 Remedies Code section 41.003(a)(2).
21
22

23 **COUNT 11 – BREACH OF CONTRACT AGAINST ANGELINA COLLEGE BOARD
24 OF TRUSTEES**

25
26 117. In August 2017, Plaintiff and Defendant Angelina College Board of Trustees (hereafter
27 cited in this Court as Defendant) executed a valid and enforceable written contract which
28 would allow Plaintiff to attend college classes at Angelina College during the Fall 2017
29
30 118. Plaintiff *fully performed* Plaintiff's contractual obligations by paying the Angelina
31 College tuition and following all lawful directives.
32
33 119. Defendant breached the contract by removing Plaintiff from the classes he contracted to
34 attend without just cause.
35
36 120. Defendant's breach caused injury to plaintiff, which resulted in the following damages:
37 loss of earning potential, loss of tuition paid, emotional distress.
38
39 121. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

40 **COUNT 12 – BREACH OF CONTRACT AGAINST ANGELINA COLLEGE BOARD
41 OF TRUSTEES**

1 122. In August 2017, Plaintiff and Defendant Angelina College Board of Trustees (hereafter
2 cited in this Court as Defendant) executed a valid and enforceable written contract which
3 would allow Plaintiff to attend college classes at Angelina College during the Fall 2017.
4 As part of this contract, Defendant agreed that Plaintiff would be provided a specific
5 disciplinary process if disciplinary issues arise.

6 123. Plaintiff *fully performed* Plaintiff's contractual obligations by paying the Angelina
7 College tuition and following all lawful directives.

8 124. Defendant breached the contract by removing Plaintiff from the classes he contracted to
9 attend without following the College Policy that it contractually agreed to follow.

10 125. Defendant's breach caused injury to plaintiff, which resulted in the following damages:
11 loss of earning potential, loss of tuition paid, emotional distress.

12 126. Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

13 **COUNT 13 – TORTIOUS INTERFERENCE WITH EXISTING CONTRACT AGAINST**
14 **BOYD, HUDMAN AND SIMON**

15 127. Plaintiff had a valid contract with Angelina College for the enrollment in level classes at
16 Angelina College during the Fall 2017 semester

17 128. Defendants Boyd, Hudman and Simon (hereafter referred in this Court as Defendants) or
18 had reason to know of Plaintiff's contract with Angelina College and plaintiff's interest in
19 the contract since they were employees of Angelina College and were each fully aware of
20 Plaintiff's enrollment.

21 129. Defendant willfully and intentionally interfered with plaintiff's contract with Angelina
22 College by making, publishing and republishing false accusations which each of the
23 Defendants knew were false. As for Hudman and Simon, they maliciously prosecuted
24 disciplinary actions that they knew were unwarranted by the facts and law.

25 130. Defendants interference proximately caused injury to plaintiff, which resulted in the
26 following actual damage or loss: Plaintiff was removed from his classes

27 131. Exemplary damages. Plaintiff's injury resulted from defendant's malice or actual fraud,
28 which entitles plaintiff to exemplary damages under Texas Civil Practice & Remedies
29 Code section 41.003(a).

30 **I. REQUEST FOR PRELIMINARY INJUNCTION**

31 132. Plaintiff will likely suffer irreparable injury if defendant is not *restrained from expelling*
32 *Plaintiff and allowing him to attend College without restriction* while this suit is pending

1 as the acts complained of deprive Plaintiff of his constitutional rights. See *Winter v. Nat.
2 Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008); *Celsis In Vitro, Inc. v. CellzDirect, Inc.*,
3 664 F.3d 922, 930 (Fed. Cir. 2012); *RoDa Drilling Co. v. Siegal*, 552 F.3d 1203, 1210-
4 12 (10th Cir. 2009);

5 133. . There is no adequate remedy at law because you cant put a price on a Plaintiff's
6 constitutional rights. See *N. Cal. Power Agency v. Grace Geothermal Corp.*, 469 U.S.
7 1306, 1306 (1984); *Rosario-Urdaz v. Rivera-Hernandez*, 350 F.3d 219, 222 (1st Cir.
8 2003); *Winston v. Gen. Drivers, Warehousemen & Helpers Local Union No. 89*, 879 F.
9 Supp. 719, 725 (W.D. Ky. 1995

10 134. There is a substantial likelihood that plaintiff will prevail on the merits because as the
11 United States Constitution clearly prohibits punishing Plaintiff for filing a grievance,
12 restricting Plaintiff's right to file a grievance without due process and the restricting
13 Plaintiff's freedom of speech. See *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931-32 (1975);
14 *Planned Parenthood Ass'n of Utah v. Herbert*, 828 F.3d 1245, 1252 (10th Cir. 2016);
15 *Sindicato Puertorriqueño de Trabajadores v. Fortuño*, 699 F.3d 1, 10-11 (1st Cir. 2012);

16 135. The harm faced by plaintiff outweighs the harm that would be sustained by defendant
17 if the preliminary injunction were granted. { See *Yakus v. United States*, 321 U.S. 414,
18 440 (1944); *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 297 (5th Cir.
19 2012); *Coca-Cola Co. v. Purdy*, 382 F.3d 774, 789 (8th Cir. 2004)

20 136. Issuance of a preliminary injunction would not adversely affect the public interest. See
21 *Opulent Life Church*, 697 F.3d at 298; *All. for the Wild Rockies v. Cottrell*, 632 F.3d
22 1127, 1138-39 (9th Cir. 2011); *Abbott Labs. v. Sandoz, Inc.*, 544 F.3d 1341, 1362-63
23 (Fed. Cir. 2008

24 137. Plaintiff is willing to *post a bond in the amount the Court deems appropriate*. See
25 *Zambelli Fireworks Mfg. Co. v. Wood*, 592 F.3d 412, 425-26 (3d Cir. 2010); *Nichols v.
26 Alcatel USA, Inc.*, 532 F.3d 364, 379 (5th Cir. 2008)

27 138. Plaintiff asks the Court to set his application for preliminary injunction for hearing at
28 the earliest possible time and, after hearing the request, to issue a preliminary injunction
29 against defendant.

30 J. REQUEST FOR PERMANENT INJUNCTION

31 139. Plaintiff asks the Court to set his application for injunctive relief for a full trial on the
32 issues in this application and, after the trial, to issue a permanent injunction against
33 defendant.

35 K. DAMAGES

37 140. As a direct and proximate result of defendants actions, plaintiff suffered the following
38 injuries and damages.

39
40 a. Loss of earning capacity.
41 b. Damage to reputation in the past and future.
42 c. Mental anguish in the past and future.
43 d. Loss of money paid on enrollment contract

L. ATTORNEY FEES & COSTS

141. Plaintiff is entitled to an award of attorney fees, if any, and costs under 42 U.S.C. §1988(b).

M. PRAYER

142. For these reasons, plaintiff asks for judgment against defendant for the following:

- a. Actual damages of \$100,000.00.
- b. Punitive damages of \$\$100,000.00.d.
- c. Prejudgment and postjudgment interest.
- d. Costs of suit.
- e. Temporary Restraining Order barring Plaintiff's expulsion and enforcement of restrictions on Plaintiff's continued enrollment
- f. Preliminary Injunction barring Plaintiff's expulsion and enforcement of restrictions on Plaintiff's continued enrollment
- g. Permanent Injunction barring Plaintiff's expulsion and enforcement of restrictions on Plaintiff's continued enrollment
- h. All other relief the Court deems appropriate.

Respectfully Submitted,

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